

**PUBLIC INTEGRITY COMMISSION  
MINUTES  
May 15, 2018**

**1. Call to Order:** 10:06 a.m. Present: Bonnie Smith (Chair); Michele Whetzel (Vice-Chair); Commissioners: Andrew Gonser, Esq.; Andrew Manus; Kyle Evans Gay, Esq. Commission Counsel: Deborah J. Moreau, Esq.

**2. Approval of Minutes for April 17, 2018:** Moved—Commissioner Manus; seconded—Commissioner Smith. Vote--4-0, approved (Commissioner Gonser not present).

**3. Administrative Items**

A. New Commissioner Introduction—Ms. Kyle Evans Gay, Esq.

B. Upcoming Trainings:

1. May 14—City of Dover Employees
2. May 24—City of Dover Employees
3. June 1—Delaware League of Local Governments
4. June 5—City of Dover Employees
5. June 7—City of Dover Employees
6. June 20—DHSS
7. June 26—City of Dover Council
8. July 19—State OMB

C. Candidate Financial Disclosure filings

**4. Motion to go into Executive Session<sup>1</sup> to Hear Requests for Advisory Opinions, Waivers and Complaints:** Moved--Commissioner Whetzel; seconded—Commissioner Manus. Vote--4-0, approved (Commissioner Gonser not present).

**5. 16-31:** Update on case for new members. PIC won the Superior Court appeal. Case is now being appealed to the Delaware Supreme Court.

**6. 18-12—Complaint**

**Procedure**

Any person may file a sworn Complaint alleging violations of Title 29, Delaware Code, ch. 58. 29 *Del. C.* § 5810(a). On February 2, 2018, Complainant attested to a sworn Complaint. PIC received the Complaint on February 16, 2018. The Complaint appeared to be notarized in the appropriate format. (29 *Del. C.* § 4328(3)). (See *Hanson v. PIC*, 2012 WL 3860732 (Del. Super. Aug. 30, 2012) (*aff'd* *PIC v. Hanson*, 69 A.3d 370 (Del. 2013)).

After deciding the Complaint was properly sworn, the Commission next examined the Complaint to determine if the allegations were frivolous or failed to state a violation. 29 *Del. C.* § 5809(3); *Commission Rules*, p.3, III(A). At this stage of the proceedings all facts were assumed to be true. 29 *Del. C.* § 5808(A)(a)(4). Allegations that are deemed to be frivolous or

that fail to state a claim should be dismissed. 29 *Del. C.* § 5809(3). The remaining allegations were then examined to determine if a majority of the Commission had reasonable grounds to believe a violation may have occurred.<sup>1</sup> *Id.* "Reasonable grounds to believe" is essentially whether there was any reasonably conceivable set of circumstances susceptible of proof of the allegation. *Spence v. Funk*, 396 A.2d 967 (Del. Super., 1978) (interpreting motion to dismiss under Super. Ct. Civ. Rule of Procedure 12(b)).<sup>2</sup>

## **Personal Jurisdiction**

No Code of Conduct legislation shall be deemed sufficient to exempt any county, municipality or town from the purview of Subchapter I, Chapter 58 of Title 29 unless the Code of Conduct has been submitted to the State Ethics Commission [now Public Integrity Commission] and determined by a majority vote thereof to be at least as stringent as Subchapter I, Chapter 58, Title 29."

29 *Del. C.* § 5802(4).

County employees, as well as elected and appointed officials, are subject to the State Code of Conduct unless the county adopts a Code of Conduct that is at least as stringent as the State Code of Conduct. 29 *Del. C.* §5802(4). County employee was subject to the State Code of Conduct because [the] County had not adopted its own Code of Conduct.

## **Subject Matter Jurisdiction**

The Commission can only address alleged violations of "this chapter"-Title 29, ch. 58. 29 *Del. C.* § 5810(h). The Complaint alleged [Employee] violated: 29 *Del. C.* §§ 5805(a)(1) & (2)<sup>3</sup>; 5806(a), (b) & (c). The alleged conduct appeared to fall within the Commission's statutory jurisdiction.

## **Facts**

Generally, Complainant alleged [that Employee] used his position with the County to the benefit of various members of [a local] family. Complainant also alleged that [Employee], himself, benefitted from financial investments in Delaware Limited Liability Companies doing business in [the] County, which may, or may not, have included joint ownership with one or more members of the [local] family. Complainant urged the Commission to force [Employee] to reveal his ownership interests in any Delaware LLC so a determination could be made as to whether [Employee] had benefitted himself or members of the [local] family.

Specifically, Complainant alleged that [Employee had used his influence to benefit a non-profit organization in which two members of the local family had an interest]. The [non-profit organization had planned a joint project with the County to benefit the local community].

Complainant alleged [Employee]'s influence on the project was improper because his

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<sup>1</sup> "Reason to believe" means "probable cause." *Coleman v. State*, 562 A.2d 1171, 1177 (Del., 1989). "Probable cause" means facts and circumstances are enough to warrant a person of reasonable caution to believe an offense occurred. *State v. Cochran*, 372 A.2d 193, 195 (Del., 1977).

<sup>2</sup> Superior Court Rules are used because if a violation is found, the individual may appeal to that Court. 29 *Del. C.* § 5810(h)(2).

<sup>3</sup> The Complaint lists 29 *Del. C.* §§ 5805(a) and (b) but quotes §§ 5805(a)(1) & (2). The Commission may rely upon the more descriptive language quoted in the Complaint.

spouse was employed at one of the family's [local] businesses. Complainant attached several Facebook posts illustrating [the spouse's] employment [at the business] between March 2016 and August 2017. Complainant further alleged that the terms of the [agreement between the County and the non-profit organization] were so favorable that [Employee] must have been influenced by either his wife's employment or his personal business relationship(s) with the [local] family. Based on the foregoing, Complainant believed that [Employee] should have recused himself from [matters related to the non-profit organization].

**A. 29 Del. C. § 5805(a)(1): County employees or officials may not review or dispose of matters if they, or a close relative, have a personal or private interest that may tend to impair judgment in the performance of official duties.**

The allegations that [Employee] *may* own LLC businesses with the [local] family were speculative and not supported by sufficient facts to allow the Commission to conduct a proper evaluation. The Delaware Department of State ("DOS") oversees the laws governing LLC entities. *Title 6, Ch. 18 Del. Code*. The law does not require LLC owners/members to disclose their identities. The LLC registration process requires only the name of the entity's registered agent, for service of process, and the signature of the person filing the Certificate of Formation which may, or may not, be a member of the LLC. 8 Del. C. § 18-201. DOS is only required to publish the names of the LLCs registered in Delaware. 8 Del. C. § 18-104(j). DOS is not required to collect information about the identities of the LLC's members. As a result, it was not possible for the Commission to determine whether [Employee] had an interest in any LLC, either alone or with members of the [local] family. While absence of information is not always confirmation that an event did not occur, [Employee] was entitled to a strong presumption of honesty and integrity. *Beebe Medical Center v. Certificate of Need Appeals Board*, C.A. No. 94A-01-004 (Del. Super. June 30, 1995), *aff'd.*, No. 304 (Del., January 29, 1996). As a result, the allegation was dismissed as conclusory and not supported by sufficient facts to allow the Commission to determine that a violation had occurred.

The Complainant's next two allegations were that 1) the terms of the agreement were so favorable to the [non-profit organization] that it must have been the product of [Employee]'s personal interest in the [local] family and 2) [Employee] had a personal interest in the [non-profit organization]'s success because his wife previously worked for the [local] family. When evaluating these provisions of the Code of Conduct, the Commission has previously emphasized the fact that a course of conduct need not actually result in a violation, only that it "may result" in a violation. *Commission Op. Nos. 92-11; 99-34*. As to the existence of a conflict of interest, Delaware Courts have held that for the interest to be sufficient [to constitute a conflict of interest] the allegation of a conflict cannot be merely conclusory, without supporting facts. *Shellburne*, 238 A.2d at 331; *Camas v. Delaware Board of Medical Practice*, Del. Super., C.A. No. 95A-05-008, Graves, J. (November 21, 1995).

The agreement between the [non-profit organization] and the County was described as a public-private partnership. In order to understand the potential for a conflict of interest, it was necessary for the Commission to review the circumstances under which the conduct was alleged to have occurred. Public-private partnerships are increasingly used by governments at all levels<sup>4</sup> to leverage resources needed for capital improvements. *Public Private Partnerships*:

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<sup>4</sup> The federal government agencies using the P3 model for capital investments include, but are not limited to, the Food & Drug Administration (*LaSalle Partners v. U.S.*, 48 Fed. Cl. 797 (March 9, 2001)); the Internal Revenue Service (*U.S. v. H & R Block, Inc.*, 2011 WL 2182544 (June 6, 2011)); the Department of the Interior (2017 WL 3049266 (July 18, 2017)).

*Issues and Considerations, Practical Law Practice Note*, pg. 1. The partnership is predicated on the fact that both the public entity and the private entity share in the risks and rewards of the joint endeavor.

Governments often do not want (or cannot afford) to assume full financial and operational responsibility for their infrastructure projects. These projects are capital intensive and governments may not have the resources, personnel and expertise necessary to develop and manage these projects....As a result, governments are increasingly using P3s<sup>5</sup> as a procurement method to develop their infrastructure.

*Id.*, pg. 2

The use of the P3 model has become so prevalent that the Financial Accounting Standards Board (FASAB) issued a formal statement detailing the need for P3s and the unique financial reporting rules which are applied to those entities.

[F]ederal public-private partnerships (P3s) are risk-sharing arrangements or transactions with expected lives greater than five years between public and private sector entities. Such arrangements or transactions provide a service or an asset for government and/or general public use where in addition to the sharing of resources, each party shares in the risks and rewards of said arrangements or transactions. As federal entities face under-utilization and skill retention issues....some entities are entering to P3 arrangements/transactions to put both infrastructure and government personnel to heightened work.

*FASAB Statement 49 (F.A.S.A.B.)*, 2016 WL 3209743 (June 30, 2017).

In sum, P3 agreements are used by a multitude of government entities to leverage capital investments, while reducing the risk associated with the project, much like the agreement between the [non-profit organization] and the County.

The Commission considered the Complainant's allegation that the terms of the agreement were so favorable to the [non-profit organization] that [Employee]'s official judgment must have been affected by a conflict of interest. Under the terms of the agreement, both the County and the [non-profit organization] accepted various risks and rewards. However, it was difficult for the Commission to evaluate the measure of risk vs. reward using the comparative documents included with the Complaint. The example provided by the Complainant referenced loans from [a different private entity] to members of the *public*, not to the County. The County's involvement in that matter was to allow remaining funds from a previous program to be deposited in the new fund. Therefore, the Commission's review of [the included documents] did not assist the Commission in deciding if the terms of the agreement between the [non-profit organization] and the County were favorable or unfavorable. In addition, it would be difficult to compare two separate projects involving different entities, different goals, different risks and rewards. As a result of the insufficient factual basis, the Commission dismissed the allegation that the agreement was so favorable that it had to be influenced by [Employee]'s compromised judgment.

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<sup>5</sup> Public Private Partnership

The Commission then considered the allegation that [Employee] had a conflict of interest when he acted on matters related to the P3 because of his wife's employment with a [locally-owned] business. Complainant alleged those actions occurred in December 2017 and January 2018. After the Commission reviewed the Complaint's *Exhibit A*, they determined that it was likely that [the spouse] had previously worked for a business owned by [a local family]. However, it was not clear whether she was still employed there or if she worked there during the time that [Employee] acted on matters related to the [non-profit organization] and the County. Assuming [the spouse] was still working for [the local business], the Commission considered whether her employment with a business owned by two members of the [non-profit organization]'s 14 member board of directors was sufficient to create a personal or private interest likely to affect [Employee]'s official judgment.

The [non-profit organization]'s Board was comprised of 14 members. Among the 14 members were [a variety of people with diverse backgrounds]. Only two of the members, a minority, were part of the [local] family. The [non-profit organization] would be required to donate [significant resources] before the County would be required to [contribute their share of the project]. The County was protected from liability because [their contribution to the project was secured by the assets donated by the non-profit organization].

Complainant specifically alleged a conflict of interest regarding [Employee]'s official actions in December 2017 and January 2018. The documentation provided would indicate that [the spouse] stopped working for the [local] business in the summer of 2017. At the time [of the official action], the conflict of interest would have been moot. Even assuming [the spouse] was still employed by the [local business] at the time [Employee] acted on matters related to the [project], the Commission decided the relationship between [Employee] and his wife's employment at a company owned by the [local] family, who were two members of a 14 member board of directors, was too attenuated to support the inference of a conflict of interest. The Delaware Superior Court has found that the mere allegation of a familial relationship without additional facts to support a charge of a conflict of interest was insufficient to state a claim. *Camas v. Delaware Board of Medical Practice, Del. Super.*, C.A. No. 95A-05-008, Graves, J. (November 21, 1995). The familial relationship in that case was one of husband and wife. *Id.*

Furthermore, in situations where governments and private entities have created a public/private partnership, it is difficult to discern an official's bias when acting on the subject of the partnership because, by definition, a vote that is presumed to benefit the private entity also benefits the government entity. Based on the foregoing, the Commission dismissed Complainant's allegations related to 29 *Del. C. § 5805(1)*.

**29 *Del. C. § 5805(a)(2)*: A person has an interest which tends to impair the person's independence of judgment in the performance of their duties when:**

- a. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or**
- b. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.**

As a matter of law, a person has a personal or private interest if any decision "with

respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent” than others similarly situated or if “the person or a close relative has a financial interest in a private enterprise which would be affected” by a decision on the matter to a greater or lesser degree than others similarly situated. 29 Del. C. § 5805(a)(2)(a) and (b). If [Employee] had a demonstrable conflict of interest, this provision would have applied. However, as a predicate, the Commission would have to link [Employee]’s official actions concerning the [non-profit organization] to [the spouse’s] financial interest in working for a completely separate business, in an unrelated industry. Consequently, the Commission decided that the conflict of interest did not exist because of the attenuated relationship between the [local] businesses and the [non-profit organization]’s project.

**29 Del. C. § 5806(a): Each county employee, officer and honorary county official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such employee, officer or honorary official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the county and its government.**

This is basically an appearance of impropriety test. *Commission Op. No. 92-11*. The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official’s duties could not be performed with honesty, integrity and impartiality. *In re Williams*, 701 A.2d 825 (Del. 1997). In deciding appearance of impropriety issues, the Commission looked at the totality of the circumstances. See, e.g., *Commission Op. No. 97-23* and *97-42*. Those circumstances should be examined within the framework of the Code’s purpose which is to achieve a balance between a “justifiable impression” that the Code is being violated by an official, while not “unduly circumscribing” their conduct so that citizens are encouraged to assume public office and employment. 29 Del. C. §§ 5802(1) and 5802(3).

The Commission has previously held that in deciding if there is an appearance of impropriety it is improper to ascribe evil motives to a public official based only on suspicion and innuendo. *Commission Op. No. 96-75 (citing CACI, Inc-Federal v. United States, Fed. Cir., 719 F.2d 1567 (1967))*. That holding is consistent with the Delaware Supreme Court decision which held: absent the existence of a conflict, it would not disqualify an individual based on an unarticulated concern for the “appearance of impropriety.” It noted that appearances of impropriety claims have been criticized as being too “imprecise, leading to ad hoc results.” *Seth v. State of Delaware*, Del. Supr., 592 A.2d 436 (1991).

The Commission decided that given the absence of a conflict of interest (as explained above), the appearance of impropriety alone would not sustain a finding of a violation of the Code of Conduct. That was especially true when a consideration of the totality of the circumstances required the Commission to consider the benefits of the public/private partnership that were anticipated to accrue to the County. Therefore, the allegations related to 29 Del. C. § 5806(a) were dismissed.

**29 Del. C. § 5806(b): No county employee, county officer or honorary county official shall have any interest in any private enterprise nor shall such employee, officer or honorary official incur any obligation of any nature which is in substantial conflict with the proper performance of such duties in the public interest. No county employee, county officer or honorary county official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:**

**(1) Impairment of independence of judgment in the exercise of official duties;**

To avoid impaired judgment in performing official duties, County officials may not review or dispose of matters if they have a personal or private interest. 29 *Del. C.* § 5805(a)(1). The Commission decided, as set forth above, that [the spouse's] employment with a [local] family's business was insufficient to support the allegation that [Employee]'s professional judgment was compromised when he acted on matters related to the public/private partnership.

**(2) An undertaking to give preferential treatment to any person;**

The next concern addressed by the statute is to insure co-workers and colleagues are not placed in a position to make decisions that may result in preferential treatment to any person. There were no facts that would indicate that [Employee]'s actions related to the [non-profit organization]'s project was predicated on his wife's employment.

**(3) The making of a governmental decision outside official channels;**

The Complainant did not allege that [Employee] was making official decisions outside official channels. In fact, the allegation in the Complaint was quite the opposite. [Employee] acted in an open forum, in full view of the public and on the record.

**(4) Any adverse effect on the confidence of the public in the integrity of the government of the county.**

The purpose of the code is to insure that there is not only no actual violation, but also not even a "justifiable impression" of a violation, 29 *Del. C.* § 5802, the Commission treated this provision as an appearance of impropriety standard. *Commission Op. No. 07-35*. The test was whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the County's duties could be performed with honesty, integrity and impartiality. *In re Williams*, 701 A.2d 825 (Del. 1997).

The Commission decided that under the 'reasonable person' standard, [Employee]'s official duties could still be performed with impartiality, honesty and integrity. The tenuous connection between the [non-profit organization] and the businesses owned by the [local] family, coupled with the anticipated benefits of the public/private partnership, did not support a justifiable impression of a violation.

As a result of the foregoing, the Commission dismissed Complainant's allegations regarding violations of 29 *Del. C.* § 5806(b).

**29 *Del. C.* § 5806(c): No county official shall acquire a financial interest in any private enterprise which such official has reason to believe may be directly involved in decisions to be made by such official in an official capacity on behalf of the county.**

Complainant did not allege that [Employee] made official decisions related to [the local business]. That is/was the entity that [Employee] would have had a conflict of interest with, if his wife had continued to be employed there. The Commission could not draw an inference that an interest in [the local business] was the same as having an interest in the [public/private project] and this allegation was also dismissed.

**CONCLUSION**

The Complaint was dismissed in its entirety for failure to properly allege facts upon which the Commission could support a finding of a violation of the Code of Conduct.

Moved—Commissioner Manus; seconded—Commissioner Whetzel. Vote—4-0, approved (Commissioner Gonser not present).

*Commissioner Gonser arrived at the meeting.*

## **7. 18-19—Private Interest**

[Employee] worked for a Division within [a State agency] in [a position related to finances and accounting]. His job duties included: budget analysis; strategic planning; review and analysis of budget requests; developing strategies to maximize funding; providing advice to management regarding the allocation of resources; monitoring budget; analyzing and monitoring project initiatives and performance.

[Employee] had established a limited liability company. In sum, [Employee] wanted to consult with private businesses and government entities using his [financial aptitude]. He did not specify what types of government entities he planned to target.

[Employee] asked the Commission if his private business would create a conflict of interest with his State position, in violation of the Code of Conduct.

### **Applicable Law**

#### **1. In their official capacity, employees may not review or dispose of matters if they have a personal or private interest in a matter before them. 29 Del. C. § 5805(a)(1).**

A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of the person's duties with respect to that matter." 29 Del. C. § 5805(a)(1). As a matter of law, a person has a personal or private interest if any decision "with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent" than others similarly situated or if "the person or a close relative has a financial interest in a private enterprise which would be affected" by a decision on the matter to a greater or lesser degree than others similarly situated. 29 Del. C. § 5805(a)(2)(a) and (b). A personal or private interest is not limited to narrow definitions such as "close relatives" and "financial interest." 29 Del. C. § 5805(a)(2). Rather, it recognizes that a State official can have a "personal or private interest" outside those limited parameters. It is a codification of the common law restriction on government officials. See, e.g., *Commission Op. Nos. 00-04 and 00-18*. When there is a personal or private interest, the official is to recuse from the outset and even neutral and unbiased statements are prohibited. *Beebe Medical Center v. Certificate of Need Appeals Board*, C.A. No. 94A-01-004 (Del. Super. June 30, 1995), *aff'd*, No. 304 (Del., January 29, 1996).

[Employee]'s LLC qualified as a private interest. Based upon his written submission and his comments at the hearing, the Commission decided that his LLC did not create a conflict of interest with his State job duties, with a few caveats. First, he could not contract with any



division of [his State agency] because the Code of Conduct prohibits an employee from representing a private entity before their own agency. 29 Del. C. § 5805(b). Second, he could not contract with any of his agency's vendors. 29 Del. C. § 5805(a)(1). If he were to do so, he could create a situation where he would be required to review and dispose of matters related to that vendor while performing his State job duties. Lastly, if he contracted with a local municipality, he must confirm that the entity did not receive State monies based upon [decisions he made as part of his State job duties]. If he were to do so, it could create a situation where the municipality would pay him with funds they received from the State. Such a scenario would call into question the independence of his official judgment. *Id.*

Apart from the above cited limitations, [Employee]'s LLC did not appear to create a conflict of interest with his State job duties so long as he did not use State time and resources to work on his private interest.

**2. Employees may not engage in conduct that may raise suspicion among the public that they are engaging in conduct contrary to the public trust. 29 Del. C. § 5806(a).**

The purpose of the code is to insure that there is not only no actual violation, but also not even a "justifiable impression" of a violation. 29 Del. C. § 5802. The Commission treats that as an appearance of impropriety standard. *Commission Op. No. 07-35*. The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be performed with honesty, integrity and impartiality. *In re Williams*, 701 A.2d 825 (Del. 1997). Thus, in deciding appearance of impropriety issues, the Commission looks at the totality of the circumstances. *See, e.g., Commission Op. No. 97-23 and 97-42*. Those circumstances should be examined within the framework of the Code's purpose which is to achieve a balance between a "justifiable impression" that the Code is being violated by an official, while not "unduly circumscribing" their conduct so that citizens are encouraged to assume public office and employment. 29 Del. C. §§ 5802(1) and 5802(3).

At the hearing, [Employee] asked if parking his personal vehicle, decorated with advertisements for his LLC, in a State-owned parking lot would violate the Code's prohibition against creating an appearance of impropriety. While the Commission did not find an appearance of impropriety *per se*, he was made aware that calling attention to his private business during his State work hours would likely require him to repeatedly explain the separation between his State job duties and his private interest. However, as long as he abided by the restrictions cited above and provided details about his dual interests when asked, it was unlikely that anyone would suspect he was engaged in conduct contrary to the public trust. The restrictions imposed on [Employee] achieved a fair balance between serving the Code's purpose without unduly circumscribing his conduct.

Motion: [Employee]'s private interest did not create a conflict of interest with his State job duties as long as he abided by the restrictions set forth by the Commission. Moved—Commissioner Whetzel; seconded Commissioner Gonser. Vote—5-0, approved.

**8. 18-16—Complaint**

The Complaint was almost identical to the one submitted in 18-12 and was filed against the same individual. However, [the Complainant] referenced an admission made by [Employee] during a meeting, which was recorded. The Commission decided to pass this matter until

Commission Counsel could verify what [Employee] said on the recording. Moved—Commissioner Gonser; seconded—Commissioner Gay. Vote—5-0, approved.

**9. Motion to Go Out of Executive Session:** Moved—Commissioner Whetzel, seconded—Commissioner Gonser. Vote—5-0, approved.

**10. Adjournment:** Next meeting June 19, 2018.

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<sup>i</sup> Pursuant to 29 Del. C. § 10004(6) to discuss non-public records (29 Del. C. § 10002(6) Any records specifically exempted from public disclosure by statute or common law), as the written statements required for advisory opinions and complaints are subject to the confidentiality standards in 29 Del. C. § 5805(f), 29 Del. C. § 5807(d) Advisory Opinion Requests, and 29 Del. C. § 5810(h) for Complaints. Further, the proceedings, like personnel actions are, by statute, closed unless the applicant for the advisory opinion requests a public meeting, 29 Del. C. § 5805(f), 29 Del. C. § 5807(d), or the person charged in a complaint requests a public meeting. 29 Del. C. § 5810(h). No applicant for an advisory opinion, nor a person charged by a complaint has requested an open meeting.